

**Amendment and Response**

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Serial No.: 10/728,439

Confirmation No.: 9418

Filed: 5 December 2003

For: POLYMER COMPOSITION WITH BIOACTIVE AGENT, MEDICAL ARTICLES, AND METHODS

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**Remarks**

The Office Action mailed 13 August 2007 has been received and reviewed. Claims 1, 7, 13, 19, 27, 53-55, and 75 having been amended, and claims 11, 46-47, 51-52, 56-57, 61-74, and 76-93 having been cancelled, without prejudice, the pending claims are claims 1-10, 12-45, 48-50, 53-55, 58-60, and 75. Reconsideration and withdrawal of the rejections are respectfully requested.

Support for the amendment to each independent claim is at page 5, lines 10-17. No new matter has been added.

**Affirmation of Provisional Election**

The Examiner issued a Restriction Requirement under 35 U.S.C. 121 in the above-identified application, grouping the claims as follows: Group I, Claims 1-10, 12-45, 48-50, 53-55, 58-60, and 75, drawn to a composition, Group II, Claims 62-66, 70-74, and 76-88, drawn to a method of making the composition, and Group III, Claims 46, 47, 61, 67-69, and 89-93, drawn to an article. A provisional election to prosecute claims 1-10, 12-45, 48-50, 53-55, 58-60, and 75, Group I, was made in response to a telephone conversation with the Examiner on 2 August 2007. The provisional election to prosecute Group I is herein affirmed.

**Double Patenting Rejection**

Claims 1-10, 12, 19-45, 48-50, 53-55, 58-60, and 75 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15, 19-21, 27-39, 41-46, 49, 51, 53-63, and 70 of U.S. Patent Application No. 10/728,577 (published as US 2004/0180093) alone or in view of Laurin et al. (U.S. Patent No. 4,603,152). Upon an indication of otherwise allowable subject matter and in the event this rejection is maintained, Applicants will provide an appropriate response.

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For: POLYMER COMPOSITION WITH BIOACTIVE AGENT, MEDICAL ARTICLES, AND METHODS**The 35 U.S.C. §112, Second Paragraph, Rejection**

The Examiner rejected claims 53-55 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner alleged with respect to claims 53-55, the term "the hydrophobic phase" lacks antecedent basis. Claims 53-55 have been amended, thereby rendering this rejection moot.

**The 35 U.S.C. §103 Rejections**

The Examiner rejected claims 1-4, 6-9, 12, 19-39, 42-45, 48-50, 52, 53, 55, 58-60, and 75 under 35 U.S.C. §103(a) as being unpatentable over Asmus (U.S. Patent No. 5,270,358) alone or in view of Laurin et al. (U.S. Patent No. 4,603,152). The Examiner rejected claims 5, 10, 40, and 41 under 35 U.S.C. §103(a) as being unpatentable over Asmus (U.S. Patent No. 5,270,358) alone or in view of Laurin et al. (U.S. Patent No. 4,603,152) and further in view of Ahmed et al. (U.S. Patent No. 6,458,877). The Examiner rejected claims 13-18 under 35 U.S.C. §103(a) as being unpatentable over Asmus (U.S. Patent No. 5,270,358) alone or in view of Laurin et al. (U.S. Patent No. 4,603,152) and further in view of Yan et al. (U.S. Patent Publication No. 2003/0185889). Each independent claim having been amended, these rejections are rendered moot; however, in the event that these rejections apply to the currently pending claims they are respectfully traversed.

Asmus is directed to a gel-adhesive composite, i.e., a dispersed gel in an adhesive matrix. In contrast, Applicants claims are directed to a nonadherent polymer composition. As explained at page 5, lines 10-17 of Applicants' specification, the polymer composition itself is nonadherent (to steel per the test outlined, and preferably to wound tissue), although the nonadherent composition could be used in combination with a pressure sensitive adhesive, for example, in an article (e.g., a wound dressing). There is no teaching or suggestion in Asmus (or any motivation provided by any of the other documents cited by the Examiner) to make a nonadherent composition.

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It is respectfully submitted that the pending claims 1-10, 12-45, 48-50, 53-55, 58-60, and 75 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

By

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Date

January 8, 2008

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**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 8 day of January, 2008, at 5:40pm (Central Time).

By:

Ann M. Mueitng

Name:

Ann M. Mueitng